

Information About Using Liens to Obtain Past Due Support

What is a lien?

A lien is the right of a person who is owed money to claim an interest in the property of the person who owes the money.

What effect does a lien have?

A lien may allow the property of a person who owes money to be sold to pay a debt. It also may make it difficult for that person to sell the property until the debt is paid. When someone else holds the property (such as money deposited in a bank), a lien may keep the property owner from using the property.

How does a lien work?

A lien notifies anyone who may want to buy or receive property from a person who owes money that someone else has a claim on the property. When other persons, institutions, or entities hold property for someone who owes money and they receive proper notice that the lien exists, they know that they should not transfer the property to another without a release of the lien. Giving this notice is often called “perfecting” the lien. Anyone who transfers or receives property that is subject to a perfected lien may be required to pay the lienholder the amount of the lien.

What kinds of property can a lien affect?

A lien may affect any type of property, including real property (e.g., land and houses), motor vehicles, boats, snowmobiles, savings accounts, checking accounts, retirement accounts, livestock, furniture, trusts, stock, bonds, and other personal property.

Can I get a lien for past due support?

Yes. Any time a payer fails to pay support when it is due, the past due amount is automatically a lien against the payer’s real and personal property. However, the friend of the court may only perfect the lien under certain conditions.

When can the lien be perfected?

The friend of the court office may perfect a lien only if the support payer has an arrearage of more than the amount of support payable for two months under the support order.

How does the friend of the court perfect a lien?

The type of property controls how notice of perfection must be given. For property held by a financial institution, the friend of the court office must send notice to the financial institution.

For other property, the friend of the court office must send notice of the lien to an agency that is responsible for registering liens for that type of property. For example, liens against real property (land and buildings) must be sent to the register of deeds in the county where the property is located. Liens against motor vehicles must be sent to the Secretary of State’s office.

What information does the friend of the court office need to perfect a lien?

Before the friend of the court office can perfect a lien, it must have adequate information to identify the property. For real property, the office must know the county in which the property is located. It is helpful if the office also knows the address or legal property description. For motor vehicles, the office must know the year and make of the vehicle. It may be helpful to also have a Vehicle Identification Number (VIN) or license number.

Does the friend of the court have to perfect a lien for past due support?

The friend of the court does *not* have to perfect a lien. The friend of the court may determine that the attachable value of the property is too small to make the process worthwhile. Or, it may determine that other enforcement tools will collect the arrearage in a reasonable amount of time.

Does a lien guarantee that past due support will be paid?

A perfected lien does not automatically result in payment of support. When a lien is properly filed against property, most buyers will not consider purchasing the property until the lien is removed. If they do purchase the property, the lien lets the buyer know that all or part of the property can be taken and sold to pay the amount of the lien. If the lien is filed with someone holding the payer’s property, such as a financial institution, the person holding the property may be required to pay the amount of the lien if the holder transfers the property to the payer or another person.

Even when the lien is properly perfected, it may be necessary to take complicated legal actions to have the property sold to obtain payment of the debt. The friend of the court may determine that those actions are too costly for it to undertake.

When is a support lien removed?

At the time it perfects the lien, the friend of the court office must provide the support payer with the opportunity to contest the lien. This right to contest the lien exists for 21 days from the date when the notice was mailed to the support payer. The lien must be removed if the property owner demonstrates that he or she is not the support payer, or if the friend of the court office

determines that the support arrearage was not equal to two month's or more arrearage at the time the notice of lien was provided to the support payer. The friend of the court office must send notice to remove the lien any time that it determines support is paid in full.

Can the property be used to pay support if the lien is not removed?

Yes. The friend of the court office may take appropriate steps to have the property converted to money and transfer it for distribution to support arrearage. Before taking this action, the friend of the court office must notify the payer of its intent to levy (take the property). Once the friend of the court office receives the monetary value of the property, the amount distributed by it may not exceed the amount of the support arrearage.

I owe past due support and do not want a lien on my property. Is there anything I can do?

Yes. The friend of the court is not required to perfect a lien. You should contact your friend of the court office and discuss a plan to repay the past due support. The friend of the court may agree to a plan that would result in it not perfecting the lien. You should then live up to your agreement.

You should also take steps to change your support order any time that your income changes in a way that makes it more difficult for you to pay the amount of support you are ordered to pay. Forms and instructions for modifying support are available at your friend of the court office.

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A Guide to How a Payer's
Property May Be Used to
Obtain Payment of Past Due
Child or Spousal Support

Friend of the Court Bureau/SCAO
Michigan Supreme Court
<http://www.courts.michigan.gov/scao>

PSA 23 (3/04)
This publication is produced with IV-D funds